



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161446

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare benefits have been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Sylvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 18, 2014, an ops memo 14-16 was released announcing a change to the FoodShare policy that allows issuance of the Heating Standard Utility Allowance to all FS applicants and members based on the reasonable anticipation of receipt of an energy assistance payment through the Wisconsin Home Energy Assistance Program (WHEAP). Households that have not received WHEAP will receive the appropriate utility standard based on the utility obligations incurred by

the household at the food unit's residence. This change is to be applied for all FS applications with a filing date on or after April 28, 2014, and FS renewals processed on or after April 28, 2014, for a recertification period starting June 1, 2014.

3. On September 5, 2014, petitioner contacted the agency to complete her renewal for FS. She reported that her utilities were included in her rent expense of \$800. She is not a WHEAP recipient. However, she does have a separate telephone expense.
4. On September 16, 2014, the agency issued a notice of decision informing that her FS benefits would be reduced from \$199 to \$77 effective October 1, 2014, because she no longer qualified for the full HSUA of \$446.
5. On September 17, 2014, the agency learned that petitioner's daughter was receiving a state portion from SSI of \$135.05. Eligibility was redetermined.
6. On September 18, 2014, the agency issued a notice of decision informing that her FS benefits would be reduced from \$77 to \$16 effective November 1, 2014, due to the increase in her household's unearned income.
7. On October 23, 2014, petitioner reported that her rent increased to \$900. Eligibility was redetermined.
8. On October 24, 2014, the agency issued a notice of decision informing that her FS would increase from \$16 to \$46 effective November 1, 2014, due to her rent increase.
9. Petitioner filed this appeal to contest the reduction in the amount of FoodShare benefits effective October 1, 2014.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1.

The gross income limit for a household of two is \$2,622. *FSH*, §8.1.1.1.

If a household passes the gross income test, the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, 7 *CFR* § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have actual utility obligations unless a household has received energy assistance in the prior 12 months and then deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5). The standard allowance for a phone expense is \$30.00. *FSH*, §8.1.3. There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.3 and 8.1.3.

The standard deduction where a person has a telephone expense is \$30.00. *FSH*, §8.1.3. Given petitioner's income and deductions, the correct monthly FoodShare allotment is \$46.00. *FSH*, §8.1.2.

Petitioner's FoodShare household consists of two persons. The agency determined that Petitioner's gross household income consists of W2 benefits of \$608 and Social Security Supplement benefits for Elizabeth of \$856.05. Thus Petitioner's total gross unearned income is \$1,464.05.

Petitioner is allowed the following deductions in the allotment calculation formula: a standard deduction of \$155.00. This brings her adjusted income to \$1,309.05. As Petitioner pays rent of \$900 and has only the standard phone allowance of \$30 for total shelter expenses of \$930. This amount, minus half of the adjusted income, \$317.18, gives her excess shelter/utility costs of \$275.48, for a net adjusted income is \$1,033.57. The maximum FS allotment is \$357 minus 30% of the FS adjusted income (\$310.20) gives her a FS allotment of \$46 per month.

In reviewing the calculation of petitioner's FS allotment I do not find any errors in the final allotment determination. Ms. [REDACTED] argued that she is on a special diet; she has a G-tube. She also received WIC when she was younger. Unfortunately, I do not have the authority to increase the FS benefits if the allotment was calculated correctly based upon her income, allowable expenses and household size.

CONCLUSIONS OF LAW

The available evidence is sufficient to demonstrate that the agency correctly determined Petitioner's FoodShare allotment as of November 1, 2014.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

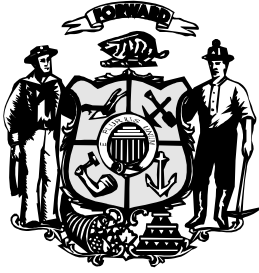
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of February, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 3, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability